

**UNITED STATES BANKRUPTCY COURT  
FOR THE  
DISTRICT OF MASSACHUSETTS**

In re:

Robert R. McNamara,  
Debtor

THE BANK OF CANTON  
Plaintiff,

v.

ROBERT R. MCNAMARA,  
Defendant.

Chapter 7

Case No. 17-11329-MSH

Adversary Proceeding

No: 18-1022

**AFFIDAVIT OF MICHAEL A. WIRTZ IN SUPPORT OF PLAINTIFF'S  
MOTION FOR SUMMARY JUDGMENT**

I, Michael A. Wirtz, counsel for the Plaintiff, The Bank of Canton (the "Plaintiff"), state under oath:

1. I am an attorney in good standing licensed to practice law in the Commonwealth of Massachusetts and, at all times herein relevant hereto, the attorneys of my firm, Jack Mikels & Associates, LLP have been counsel of record for Plaintiff in the above captioned adversary proceeding. All statements herein are based upon my personal knowledge upon records kept under my supervision and control, or by way of public record and so far as such statements are based on information and belief, I believe them to be true.

2. I submit this affidavit in support of the Plaintiff's motion for summary judgment as to depositions, production of documents and other discovery and information obtained on behalf of the Plaintiff in connection with this case.

3. Attached hereto as Exhibit A is true and accurate copy of excerpts from the transcript of the Rule 2004 Examination of Brendan M. McNamara (“Brendan”) designee of Sparrell Funeral Services, Inc. (“Sparrell”) dated July 7, 2017.

4. Attached hereto as Exhibit B is true and accurate copy of excerpts from the transcript of the continued 341 Meeting and Rule 2004 Examination of Robert R. McNamara (the “Debtor”) dated July 10, 2017.

5. Attached hereto as Exhibit C is true and accurate copy of excerpts from the transcript of the deposition of Brendan, individually and as designee of BM McNamara Funeral Services, Inc. (“BM McNamara”) and BM Mack Properties, LLC (“BM Mack”) dated March 5, 2019.

6. Attached hereto as Exhibit D is true and accurate copy of excerpts from the transcript of the deposition of the Debtor, individually and as designee of Sparrell dated March 8, 2019.

7. Attached hereto as Exhibit E is true and accurate copy of Articles of Incorporation and related corporate documents concerning Sparrell produced by the Keeper of Records of Live Oak Banking Company on or about October 26, 2017, in response to Plaintiff’s Subpoena for Rule 2004 Examination dated October 16, 2017.

8. Attached hereto as Exhibit F is a copy of the on-line case docket for Norfolk Superior Court, Docket No. 1582CV0156 (the “Norfolk Action”).

9. Attached hereto as Exhibit G is a copy of the foreclosure documents publicly recorded at the Norfolk County Registry of Deeds on or about May 5, 2015 concerning the foreclosure of mortgage from the Debtor and Alice to the Plaintiff as to the real estate located at 21 Central Street, Norwell, MA.

10. Attached hereto as Exhibit H is a copy of the on-line case docket for Norfolk Superior Court, Docket No. 1682CV01049 (the “Deficiency Action”).

11. Attached hereto as Exhibit I is a true and accurate copy of Exhibits 10 of the Rule 2004 Examination of Sparrell on July 7, 2017 and the joint deposition of the Debtor/Sparrell on March 8, 2019.

12. Attached hereto as Exhibit J is a true and accurate copy of Exhibit 3 of the Rule 2004 Examination of Sparrell on July 7, 2017 and Exhibit 11 of the joint deposition of the Debtor/Sparrell on March 8, 2019.

13. Attached hereto as Exhibit K is a true and accurate copy of the Settlement Agreement marked as Exhibit 12 of the Rule 2004 Examination of Sparrell on July 7, 2017, Exhibit 10 of the joint Deposition of Brendan/BM Mack and BM McNamara on March 5, 2019 and Exhibit 6 of the joint deposition of the Debtor/Sparrell on March 8, 2019.

14. Attached hereto as Exhibit L is a true and accurate copy of the Lease Agreement marked as Exhibit 13 of the Rule 2004 Examination of Sparrell on July 7, 2017, Exhibit 11 of the joint Deposition of Brendan/BM Mack and BM McNamara on March 5, 2019 and Exhibit 9 of the joint deposition of the Debtor/Sparrell on March 8, 2019.

15. Attached hereto as Exhibit M is a true and accurate copy of the Amendment to Settlement Agreement marked as Exhibit 14 of the Rule 2004 Examination of Sparrell on July 7, 2017, Exhibit 12 of the joint Deposition of Brendan/BM Mack and BM McNamara on March 5, 2019 and Exhibit 8 of the joint deposition of the Debtor/Sparrell on March 8, 2019.

16. Attached hereto as Exhibit N is a true and accurate copy of relevant pages of Sparrell’s General Ledger as of December 31, 2011 (with information pertinent to the arguments

in Plaintiff's Summary Judgment Motion highlighted by me) that was produced by Sparrell in response to the Subpoena for Rule 2004 Examination taken on July 7, 2017.

17. Attached hereto as Exhibit O is a true and accurate copy of relevant pages of Sparrell's General Ledger for January – June 2012 (with information pertinent to the arguments in Plaintiff's Summary Judgment Motion highlighted by me) that was produced by Sparrell in response to the Subpoena for Rule 2004 Examination taken on July 7, 2017.

18. Attached hereto as Exhibit P is a true and accurate copy of relevant pages of Sparrell's General Ledger for January – December 2013 (with information pertinent to the arguments in Plaintiff's Summary Judgment Motion highlighted by me) that was produced by Sparrell in response to the Subpoena for Rule 2004 Examination taken on July 7, 2017.

19. Attached hereto as Exhibit Q is a true and accurate copy of relevant pages of Sparrell's General Ledger for January – December 2014 (with information pertinent to the arguments in Plaintiff's Summary Judgment Motion highlighted by me) that was produced by Sparrell in response to the Subpoena for Rule 2004 Examination taken on July 7, 2017.

20. Attached hereto as Exhibit R is a true and accurate copy of relevant pages of Sparrell's General Ledger for January – December 2015 (with information pertinent to the arguments in Plaintiff's Summary Judgment Motion highlighted by me) that was produced by Sparrell in response to the Subpoena for Rule 2004 Examination taken on July 7, 2017.

21. Attached hereto as Exhibit S is a true and accurate copy of relevant pages of Sparrell's General Ledger for January – December 2016 (with information pertinent to the arguments in Plaintiff's Summary Judgment Motion highlighted by me) that was produced by Sparrell in response to the Subpoena for Rule 2004 Examination taken on July 7, 2017.

22. Attached hereto as Exhibit T is a true and accurate copy of relevant pages of Sparrell's General Ledger for January – June 1, 2017 (with information pertinent to the arguments in Plaintiff's Summary Judgment Motion highlighted by me) that was produced by Sparrell in response to the Subpoena for Rule 2004 Examination taken on July 7, 2017.

23. Attached hereto as Exhibit U is a true and accurate copy of the Agreement to Sell Real Estate marked as Exhibit 15 of the Rule 2004 Examination of Sparrell on July 7, 2017, Exhibit 13 of the joint Deposition of Brendan/BM Mack and BM McNamara on March 5, 2019 and Exhibit 9 of the joint deposition of the Debtor/Sparrell on March 8, 2019.

24. Attached hereto as Exhibit V is a true and accurate copy of the HUD-1 Settlement Statement marked as Exhibits 2J1, 2J2 and 2J3 of the joint deposition of the Debtor/Sparrell on March 8, 2019 and produced by Debtor as part of Response No. 16 to his response to the Plaintiff's First Request for Production of Documents.

25. Attached hereto as Exhibit W is true and accurate copy of the SBA \$1.39 Million Note produced by the Keeper of Records of Live Oak Banking Company on or about October 26, 2017, in response to Plaintiff's Subpoena for Rule 2004 Examination dated October 16, 2017 and produced by Debtor as part of Response No. 16 to his response to the Plaintiff's First Request for Production of Documents.

26. Attached hereto as Exhibit X is true and accurate copy of the Mortgage and Security Agreement granted by Sparrell to Live Oak Banking Company as to the Cohassett and Norwell Properties produced by the Keeper of Records of Live Oak Banking Company on or about October 26, 2017, in response to Plaintiff's Subpoena for Rule 2004 Examination dated October 16, 2017 and produced by Debtor as part of Response No. 16 to his response to the

Plaintiff's First Request for Production of Documents and marked as Exhibit 2O of the joint deposition of the Debtor/Sparrell on March 8, 2019.

27. Attached hereto as Exhibit Z is true and accurate copy of Sparrell's Balance Sheet as of March 31, 2016 produced by the Keeper of Records of Live Oak Banking Company on or about October 26, 2017, in response to Plaintiff's Subpoena for Rule 2004 Examination dated October 16, 2017 and marked as Exhibit 18 of the joint deposition of the Debtor/Sparrell on March 8, 2019.

28. Attached hereto as Exhibit AA is true and accurate (redacted) copy of Pre-need accounting produced by Debtor as part of Response No. 23 to his response to the Plaintiff's First Request for Production of Documents and marked as Exhibit 2Q of the joint deposition of the Debtor/Sparrell on March 8, 2019.

29. Attached hereto as Exhibit AB is true and accurate copy of an e-mail exchange between Brendan and Erica Loconto and Robert D. Nelson dated September 27, 2016 regarding payoff of Plaintiff's judgment in the Norfolk Action marked as Exhibit 18 of the Rule 2004 Examination of Sparrell on July 7, 2017 and Exhibit 15 of the joint Deposition of Brendan/BM Mack and BM McNamara on March 5, 2019.

30. Attached hereto as Exhibit AC is true and accurate copy of the Letter of Intent to Gift Business dated May 1, 2016 signed by the Debtor and Brendan produced by the Keeper of Records of Live Oak Banking Company on or about October 26, 2017, in response to Plaintiff's Subpoena for Rule 2004 Examination dated October 16, 2017 and marked as Exhibit 15 of the joint Deposition of the Debtor/Sparrell on March 8, 2019.

31. Attached hereto as Exhibit AD is true and accurate copy of the hearing transcript of November 30, 2015 in the Norfolk Action.

32. Attached hereto as Exhibit AE is a true and accurate copy of the Deed from Sparrell to BM Mack Properties, LLC concerning the Norwell Property that was produced by Sparrell in response to the Subpoena for Rule 2004 Examination taken on July 7, 2017 and marked as Exhibit 4 of the Rule 2004 Examination of Sparrell on July 7, 2017 and Exhibit 5 of the joint Deposition of Brendan/BM Mack and BM McNamara on March 5, 2019.

33. Attached hereto as Exhibit AF is a true and accurate copy of the Deed from Sparrell to BM Mack Properties, LLC concerning the Cohasset Property that was produced by Sparrell in response to the Subpoena for Rule 2004 Examination taken on July 7, 2017 and marked as Exhibit 11 of the Rule 2004 Examination of Sparrell on July 7, 2017 and Exhibit 6 of the joint Deposition of Brendan/BM Mack and BM McNamara on March 5, 2019.

34. Attached hereto as Exhibit AG is a true and accurate copy of the Real Estate Purchase and Sale Agreement that was produced by Sparrell in response to the Subpoena for Rule 2004 Examination taken on July 7, 2017 and marked as Exhibit 17 of the Rule 2004 Examination of Sparrell on July 7, 2017 and Exhibit 7 of the joint Deposition of Brendan/BM Mack and BM McNamara on March 5, 2019.

35. Attached hereto as Exhibit AH is a true and accurate copy of the Real Estate Purchase and Sale Agreement that was produced by Sparrell as a supplemental production in response to the Subpoena for Rule 2004 Examination taken on July 7, 2017 and marked as Exhibit 8 of the joint Deposition of Brendan/BM Mack and BM McNamara on March 5, 2019.

36. Attached hereto as Exhibit AI is a true and accurate copy of the Promissory Note made by BM McNamara and BM Mack in favor of Sparrell that was produced by Sparrell as a in response to the Subpoena for Rule 2004 Examination taken on July 7, 2017 and marked as Exhibit 16 of the Rule 2004 Examination of Sparrell on July 7, 2017, Exhibit 9 of the joint

Deposition of Brendan/BM Mack and BM McNamara on March 5, 2019 and Exhibit 14 of the joint Deposition of the Debtor/Sparrell on March 8, 2019.

37. Attached hereto as Exhibit AJ is true and accurate copy of the Appraisal Report as of August 12, 2016 for the Norwell Property produced by the Keeper of Records of Live Oak Banking Company on or about October 26, 2017, in response to Plaintiff's Subpoena for Rule 2004 Examination dated October 16, 2017 and produced by the Debtor in response to the Plaintiff's Request for Production of Documents No. 28 and marked as Exhibit 2V of the joint Deposition of the Debtor/Sparrell on March 8, 2019.

38. Attached hereto as Exhibit AK is true and accurate copy of the Appraisal Report as of August 12, 2016 for the Cohasset Property produced by the Keeper of Records of Live Oak Banking Company on or about October 26, 2017, in response to Plaintiff's Subpoena for Rule 2004 Examination dated October 16, 2017 and produced by the Debtor in response to the Plaintiff's Request for Production of Documents No. 28 and marked as Exhibit 2S of the joint Deposition of the Debtor/Sparrell on March 8, 2019.

39. Attached hereto as Exhibit Y is true and accurate copy of the Call Activity, Market Share and Pre-Need Summary as of May 31, 2016 submitted by Sparrell in connection with its application for the Acquisition Loan produced by the Keeper of Records of Live Oak Banking Company on or about October 26, 2017, in response to Plaintiff's Subpoena for Rule 2004 Examination dated October 16, 2017.

40. Attached hereto as Exhibit AL is true and accurate [redacted] copy of relevant portion of Sparrell's 2016 Federal Income Tax Return showing Goodwill value at beginning of year and year end to be \$100,000 (Schedule L) produced by the Debtor in response to the



Plaintiff's Request for Production of Documents No. 7 and marked as Exhibit 2G2 of the joint Deposition of the Debtor/Sparrell on March 8, 2019.

41. Attached hereto as Exhibit AM is true and accurate copy of the general ledger for the operating account for Sparrell for calendar year 2016 produced by Sparrell in response to Subpoena under Rule 2004 and marked as Exhibit 20 at Sparrell's Rule 2004 examination on July 7, 2017.

42. Attached hereto as Exhibit AN is true and accurate copy of the general ledger for the operating account for Sparrell for January 1 – June 1, 2017 produced by Sparrell in response to Subpoena under Rule 2004 and marked as Exhibit 21 at Sparrell's Rule 2004 examination on July 7, 2017.

43. Attached hereto as Exhibit AO is true and accurate copy of relevant records produced by the Commonwealth of Massachusetts Board of Licensure, Board of Embalming & Funeral Directing in response to a Freedom of Information Act Request made by my firm concerning the Funeral Establishment Licenses for Sparrell, BM McNamara and Funeral Directors License for the Debtor and Brendan.

44. Attached hereto as Exhibit AP is true and accurate copy of the Account records for Sparrell's \$50,000 line of credit at Eastern Bank produced by the Keeper of Records of Eastern Bank on or about November 19, 2018, in response to Plaintiff's deposition and marked as Exhibit 35 of the joint Deposition of Brendan, BM Mack and BM McNamara l on March 5, 2019.

45. Attached hereto as Exhibit AQ is true and accurate copy of the relevant [redacted] page form Sparrell's operating account at Eastern Bank depicting transactions and a balance of 11-7-2016 produced by the Keeper of Records of Eastern Bank on or about November 19, 2018,

in response to Plaintiff's deposition and also produced by Bm McNamara in response to deposition subpoena.

46. Attached hereto as Exhibit AR is true and accurate [redacted] copy of check no. 26650 from Sparrell's operating account at Eastern Bank dated December 22, 2016 payable to the Debtor in the sum of \$950 with the memo field "Cash" representing payment made to Debtor directly under the Sparrell Note produced by the Keeper of Records of Eastern Bank on or about November 19, 2018, in response to Plaintiff's deposition and marked as Exhibit 17 at the consolidated deposition of the Debtor/Sparrell on March 8, 2019.

47. Attached hereto as Exhibit AS is true and accurate [redacted] copy of Sparrell's new checking account ending 7305 with Brendan as the only authorized signor at Eastern Bank dated July 18, 2017 produced by the Keeper of Records of Eastern Bank on or about November 19, 2018, in response to Plaintiff's deposition and marked as Exhibit 34 at the consolidated deposition of the Brendan/BM Mack and BM McNamara Debtor/Sparrell on March 5, 2019.

48. Attached hereto as Exhibit AT are true and accurate [redacted] copies of a compilation of relevant Customer Statements produced by the Keeper of Records of Eastern Bank on or about November 19, 2018, in response to Plaintiff's deposition and marked as Exhibit 5 at the consolidated deposition of the Debtor/Sparrell on March 8, 2019. Portions relevant to the Plaintiff's motion for summary judgment motion have been highlighted by me.

49. Attached hereto as Exhibit AU are true and accurate [redacted] copies of a compilation of relevant Customer Statements produced by the Keeper of Records of Eastern Bank on or about November 19, 2018, in response to Plaintiff's deposition and marked as Exhibits 29, 30, 31 and 32 at the consolidated deposition of Brendan/BM Mack and BM

McNamara on March 5, 2019. Portions relevant to the Plaintiff's motion for summary judgment motion have been highlighted by me.

50. Attached hereto as Exhibit AV is true and accurate copy of the Rule 30(b)(6) deposition Subpoena served upon Sparrell by the Plaintiff and marked as Exhibit 1 at the consolidated deposition of the Debtor/Sparrell on March 8, 2019.

SWORN UNDER THE PENALTIES OF PERJURY THIS 2<sup>nd</sup> DAY OF JULY 2019.

/s/ Michael A. Wirtz

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Michael A. Wirtz, BBO# 636587